

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CARY EVAN GIAMALVA,  
Petitioner,

VS.

RICK THALER,  
Respondent.

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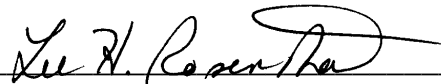
CIVIL ACTION NO. H-10-0946

**ORDER OF DISMISSAL**

The petitioner, Cary Evan Giamalva, seeks habeas corpus relief under 28 U.S.C. § 2254.<sup>1</sup> Two days after filing this petition, Giamalva filed a motion for his federal petition to be returned, which appears to be a motion for voluntary dismissal. (Docket Entry No. 8). Giamalva explains that he recently filed a habeas application in state court and he is waiting for the completion of the state habeas proceedings.

A habeas petitioner may move for a voluntary dismissal under Fed. R. Civ. P. 41(a). The petitioner's motion, (Docket Entry No. 8), is granted. This case is dismissed without prejudice. Giamalva's motion to proceed as a pauper, (Docket Entry No. 2), is granted. Giamalva's motion to waive copy requirement, (Docket Entry No. 3), and motion for evidentiary hearing, (Docket Entry No. 6), are denied as moot.

SIGNED on March 26, 2010, at Houston, Texas.



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Lee H. Rosenthal  
United States District Judge

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<sup>1</sup> On October 15, 2008, Giamalva filed a federal petition for a writ of habeas corpus, Civil Action Number H-08-3112. That petition challenged the same conviction and sentence for assault that are the basis for the present suit. On November 13, 2009, the federal court granted the respondent's motion for summary judgment in H-08-3112 and denied Giamalva's claims on the merits.

